

**COPY**

**FILED**

1 LYNNE C. HERMLE (STATE BAR NO. 99779)  
2 JESSICA R. PERRY (STATE BAR NO. 209321)  
3 ORRICK, HERRINGTON & SUTCLIFFE LLP  
4 1000 Marsh Road  
5 Menlo Park, CA 94025  
Telephone: 650-614-7400  
Facsimile: 650-614-7401  
lchermle@orrick.com  
jperry@orrick.com

2009 NOV -4 AM 11:05

CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

BY \_\_\_\_\_

6 Attorneys for Defendant  
7 BURLINGTON COAT FACTORY WAREHOUSE  
CORPORATION

8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

**FAXED**

11 MAY VANG, and  
12 all others similarly situated,

13 Plaintiffs,

14 v.

15 BURLINGTON COAT FACTORY  
WAREHOUSE CORPORATION, a  
16 New Jersey corporation; and DOES 1-  
50, inclusive,

17 Defendants.

CV09 08061 RSWL (JCx)  
CASE NO.

NOTICE OF REMOVAL TO  
FEDERAL COURT

1                   TO THE CLERK OF THE COURT AND ALL PARTIES AND THEIR  
 2 ATTORNEYS OF RECORD:

3                   PLEASE TAKE NOTICE that defendant Burlington Coat Factory  
 4 Warehouse Corporation hereby removes the above-captioned action to this Court,  
 5 based on the following facts:

6                   **I. BACKGROUND**

7                   1.       On September 17, 2009, plaintiff May Vang (“Plaintiff”) commenced  
 8 an action in the Superior Court of the State of California in and for the County of  
 9 Los Angeles, Central District (“Superior Court”), entitled “May Vang, and all  
 10 others similarly situated, Plaintiffs, vs. Burlington Coat Factory Warehouse  
 11 Corporation, a New Jersey corporation; and DOES 1-50, inclusive, Defendants,”  
 12 Case No. BC421873 (the “Action”).

13                  2.       On October 5, 2009, Plaintiff served defendant Burlington Coat  
 14 Factory Warehouse (“BCF”) with a copy of the Summons and Complaint in this  
 15 matter. A true and correct copy of the Summons and Complaint is attached to this  
 16 Notice as Exhibit A.

17                  3.       BCF is uncertain whether any other party has been properly served  
 18 with process or any other pleading in this Action.

19                  **II. JURISDICTION AND GROUNDS FOR REMOVAL**

20                  1.       BCF removes the Action to this Court on the basis of federal question  
 21 jurisdiction pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 201, *et seq.*

22                  2.       This Court has federal question jurisdiction over the Action based on  
 23 the following facts:

24                  a.       In the First Cause of Action in the Complaint, Plaintiff asserts a claim  
 25 for relief pursuant to the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et  
 26 seq.*

27                  b.       Thus, this is a civil action of which the district courts have original  
 28 jurisdiction on a claim arising under the laws of the United States, which is

1 removable without regard to the citizenship or residences of the parties. This FLSA  
 2 claim is a separate and independent claim subject to 28 U.S.C. § 1441(c).

3 c. To the extent there are non-federal claims in the Action, such claims  
 4 are within this Court's supplemental jurisdiction, *see* 28 U.S.C. § 1367, or in the  
 5 alternative within the Court's jurisdiction pursuant to 28 U.S.C. § 1441(c).

6 3. In the alternative, BCF removes the Action to this Court on the basis  
 7 of the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d)(2). This Court  
 8 has jurisdiction over the Action pursuant to CAFA based on the following facts:

9 a. The Action is a civil class action in which the amount in controversy  
 10 exceeds the sum or value of \$5,000,000, exclusive of interest and costs, as currently  
 11 pled. *See* 28 U.S.C. § 1332(d)(2).

12 b. The parties are diverse because BCF is a citizen of New Jersey and  
 13 Plaintiff is a citizen of California; or, alternatively, at least one putative class  
 14 member is a citizen of California. *See* 28 U.S.C. § 1332(d)(2).

15 c. BCF is a citizen of New Jersey because it is a corporation incorporated  
 16 in New Jersey with its principal place of business in New Jersey. *See* 28 U.S.C. §  
 17 1332(c)(1).

18 d. Plaintiff is a citizen of California because she is a citizen of the United  
 19 States and her domicile is in California. *See Kantor v. Wellesley Galleries, Ltd.*,  
 20 704 F.2d 1088, 1090 (9th Cir. 1983) ("To show state citizenship for diversity  
 21 purposes under federal common law a party must (1) be a citizen of the United  
 22 States, and (2) be domiciled in the state."); *see also* Ex. A, ¶ 2 (Complaint)  
 23 ("Plaintiff resides in and is employed by Defendant in the State of California . . .  
 24 ."). Alternatively, at least one putative class member is a citizen of California. *See*  
 25 *Kantor*, 704 F.2d at 1090; *see also* Ex. A, ¶ 2 (Complaint) ("[A]ll other members of  
 26 the Plaintiff Class . . . are, were, or will be employed by Defendants in the United  
 27 States, including in the State of California, during the relevant statutory time  
 28 period.").

1       e.     The Action does not fall within any of the removal exceptions. There  
2 is no indication that greater than one-third of the putative class members are  
3 citizens of California, and thus the exceptions of 28 U.S.C. §§ 1332(d)(3) and  
4 1332(d)(4) do not apply. Furthermore, this Action does not involve, or “solely  
5 involve[ ],” any of the securities or corporate governance-related claims specified in  
6 28 U.S.C. §§ 1332(d)(9) or 1453(d), and thus the Action does not fall within any of  
7 the removal exceptions articulated in those subsections. In addition, the primary  
8 defendant in this Action, BCF, is not a State, State official or other governmental  
9 entity, and thus the exception of 28 U.S.C. § 1332(d)(5)(A) does not apply.  
10 Moreover, as pled, the number of putative class members in the aggregate exceeds  
11 100, and thus the exception of 28 U.S.C. § 1332(d)(5)(B) does not apply.

12       4.     The removal is timely under 28 U.S.C. § 1446(b) because this Notice  
13 is filed within 30 days after service of a copy of the Complaint.

14 5. Venue lies in this Court because the Action was filed in this district.

15       6.     This Court therefore has original jurisdiction over this Action pursuant  
16 to 28 U.S.C. § 1331, 28 U.S.C. § 1367, 28 U.S.C. § 1441(c) and 29 U.S.C. § 201 *et*  
17 *seq.*, or, alternatively, 28 U.S.C. § 1332(d)(2); and this Action may be removed to  
18 this Court pursuant to 28 U.S.C. § 1441(a), (b) and (c).

Dated: November 4, 2009

LYNNE C. HERMLE  
JESSICA R. PERRY  
Orrick, Herrington & Sutcliffe LLP

JESSICA R. PERRY  
Attorneys for Defendant  
BURLINGTON COAT FACTORY  
WAREHOUSE CORPORATION

# **EXHIBIT A**

**SUMMONS**  
**(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:****(AVISO AL DEMANDADO):**

BURLINGTON COAT FACTORY WAREHOUSE CORPORATION, a New Jersey corporation; and DOES 1-50, inclusive

**YOU ARE BEING SUED BY PLAINTIFF:****(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

MAY VANG, and all others similarly situated

SUM-100

FOR COURT USE ONLY (SOLO PARA USO DE LA CORTE)
<b>CONFORMED COPY</b> OF ORIGINAL FILED Superior Court of California County of Los Angeles
SEP 17 2009
John A. Clarke, Executive Officer/Clerk By <i>[Signature]</i> Deputy <b>RUCENALOPEZ</b>

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/seithelp](http://www.courtinfo.ca.gov/seithelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/seithelp](http://www.courtinfo.ca.gov/seithelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** *Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.*

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen **esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que lo dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.**

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es): Stanley Mosk Courthouse

111 North Hill Street  
Los Angeles, CA 90012

CASE NUMBER:  
(Número del Caso):

**BC421873**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

David Spivak, 9454 Wilshire Blvd, Ste. 303, Beverly Hills, CA 90212, (310) 499-4730

DATE: **SEP 17 2009** Clerk, by **RUCENALOPEZ** Deputy  
(Fecha) **JOHN A. CLARKE** (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

**NOTICE TO THE PERSON SERVED:** You are served

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):

3.  on behalf of (specify): *Burlington Coat Factory Warehouse Corporation*  
under:  CCP 416.10 (corporation)  CCP 416.60 (minor)

CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)

other (specify):

4.  by personal delivery on (date):

1 Shaun Setareh (SBN 204514)  
2 LAW OFFICES OF SHAUN SETAREH  
3 9454 Wilshire Blvd, Penthouse Suite 3  
4 Beverly Hills, California 90212  
5 Tel: (310) 888-7771  
6 Fax: (310) 888-0109  
7 setareh@sbclaw.com

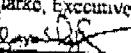
8 David Spivak (SBN 179684)  
9 THE SPIVAK LAW FIRM  
10 9454 Wilshire Blvd, Suite 303  
11 Beverly Hills, CA 90212  
12 Tel: (310) 499-4730  
13 Fax: (310) 499-4739  
14 david@spivaklaw.com

15 Louis Benowitz (SBN 262300)  
16 LAW OFFICE OF LOUIS BENOWITZ  
17 9454 Wilshire Blvd, Penthouse Suite 34  
18 Beverly Hills, California 90212  
19 Tel: (310) 888-7771  
20 Fax: (310) 888-0109  
21 louis@benowitzlaw.com

22 Attorneys for Plaintiffs,  
23 May Vang, and  
24 all others similarly situated

25 **CONFORMED COPY**  
OF ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

26 SEP 17 2009

27 John A. Clarke, Executive Officer/Clerk  
28 By  Deputy  
RUCENALOPEZ

29 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

30 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**  
(UNLIMITED JURISDICTION)

31 BC 421873

32 MAY VANG, and  
33 all others similarly situated,

34 Case No.

35 Plaintiffs,

36 CLASS ACTION COMPLAINT FOR:

37 1. Violations of the Fair Labor Standards  
38 Act;  
39 2. Failure to Compensate Employees for All  
40 Hours Worked;  
41 3. Failure to Pay Overtime Compensation;  
42 4. Unlawfully Providing Compensating  
43 Time Off in Lieu of Overtime Pay;  
44 5. Failure to Provide Meal and Rest Periods;  
45 6. Forfeiture of Vested Vacation Benefits;  
46 7. Secret Payment of Lower Wages Than  
47 Required by Statute and/or Contract;  
48 8. Failure to Provide Accurate, Written  
49 Wage Statements;  
50 9. Unfair Competition; and  
51 10. Civil Penalties.

52 vs.

53 BURLINGTON COAT FACTORY  
54 WAREHOUSE CORPORATION,  
55 a New Jersey corporation;  
56 and DOES 1-50, inclusive,

57 Defendants.

58 JURY TRIAL DEMANDED

1 On behalf of herself and all others similarly situated, plaintiff MAY VANG ("Plaintiff")  
 2 brings this action against defendants BURLINGTON COAT FACTORY WAREHOUSE  
 3 CORPORATION, and DOES 1-50, inclusive (collectively "Defendants") for violations of the  
 4 Fair Labor Standards Act, California Labor Code, and California Business and Professions  
 5 Code, and as grounds therefore alleges:

6 **INTRODUCTION**

7 1. Plaintiff contends that Defendants failed to provide her and other similarly  
 8 situated persons with legally required compensation for all hours worked, including overtime  
 9 hours, failed to provide them with meal and rest periods, failed to compensate them for missed  
 10 meal and rest periods, failed to compensate them for forfeited paid vacation benefits, secretly  
 11 paid them lower wages than required by contract and/or provided them with inaccurate wage  
 12 statements. As a result of Defendants' wrongful acts, Plaintiff now seeks restitution, damages,  
 13 and civil penalties on behalf of herself and all others similarly situated.

14 **PARTIES**

15 2. Plaintiff resides in and is employed by Defendants in the State of California.  
 16 Plaintiff and all other members of the Plaintiff Class as defined below are, were, or will be  
 17 employed by Defendants in the United States, including in the State of California, during the  
 18 relevant statutory time period.

19 3. Plaintiff brings her claims on behalf of a class ("Plaintiff Class"), which consists  
 20 of all current, former, and future employees of Defendants in the United States during the  
 21 relevant statutory time period. Members of the Plaintiff Class were not compensated in the  
 22 amounts required by the Fair Labor Standards Act, the California Labor Code, and the  
 23 regulations promulgated pursuant thereto.

24 4. Members of the Plaintiff Class were misclassified as non-exempt employees, not  
 25 compensated for all hours worked, including overtime hours, unlawfully given compensating  
 26 time off in lieu of overtime pay, not provided with all legally required meal and rest periods, not  
 27 compensated for missed meal and rest periods, caused to forfeit vested paid vacation benefits  
 28 without receiving compensation, secretly paid lower wages than required by contract and/or

1 statute, and/or not provided with accurate wage statements. Defendants' failures to compensate  
2 the Plaintiff Class as required and to provide them with required breaks (or compensation for  
3 missed breaks) is and was the result of unlawful policies and practices that are and have been  
4 commonly applied to members of the Plaintiff Class.

5. Plaintiff also brings this action on behalf of herself, the general public, and all  
5 others similarly situated pursuant to California Business and Professions Code §§ 17200, *et seq.*

7       6.     Defendant BURLINGTON COAT FACTORY WAREHOUSE  
8     COPORATION is a corporation organized under the laws of the State of New Jersey.  
9     Burlington is a retail merchandiser with store locations throughout the State of California.

10       7. Plaintiff is ignorant of the true names, capacities, relationships, and extents of  
11 participation in the conduct alleged herein, of the defendants sued as DOES 1 through 50,  
12 inclusive, but is informed and believes and thereon alleges that said defendants are legally  
13 responsible for the wrongful conduct alleged herein and therefore sues these defendants by such  
14 fictitious names. Plaintiff will amend the complaint to allege the true names and capacities of  
15 the DOE defendants when ascertained.

16       8. Plaintiff is informed and believes and thereon alleges that each defendant acted  
17 in all respects pertinent to the action as the agent of the other defendants, carried out a joint  
18 scheme, business plan or policy in all respects pertinent hereto, and that the acts of each  
19 defendant are legally attributable to each of the other defendants.

## **FACTUAL ALLEGATIONS**

21 9. Throughout the relevant statutory period, Plaintiff and other members of the  
22 Plaintiff Class are and/or were employees of Defendants and residents of the United States,  
23 including the State of California entitled to the protections afforded by the Fair Labor Standards  
24 Act, the California Labor Code, and Industrial Welfare Commission Orders.

25       10.    At relevant times, Defendants underpaid wages to Plaintiff and other members of  
26 the Plaintiff Class by not compensating them for all hours worked, including overtime hours,  
27 unlawfully providing them with compensating time off in lieu of overtime pay, failing to  
28 provide them with all legally required meal and rest periods, failing to compensate them for

1 forfeited vested paid vacation benefits, secretly paying them lower wages than required by  
 2 contract and/or statute, and/or not providing them with accurate written wage statements.

3 11. The underpayment of wages to Plaintiff and the Plaintiff Class is a consequence  
 4 of Defendants' unlawful compensation policies and practices which were centrally devised,  
 5 implemented, communicated, and applied to members of the Plaintiff Class. These unlawful  
 6 compensation practices include, but are not limited to, the following:

- 7 A. Misclassifying Assistant Store Managers and Store Managers as exempt  
 8 employees notwithstanding that they are, were, or have been non-exempt  
 9 employees pursuant to Industrial Welfare Commission Order No. 7-2001  
 10 §§ 1(A)(1)-(2) because primarily engaged in non-exempt job duties;
- 11 B. Failing to pay legally required compensation for all hours worked;
- 12 C. Failing to pay all legally required overtime compensation;
- 13 D. Failing to provide all legally required meal and rest periods;
- 14 E. Failing to provide required legally required compensation for missed  
 15 meal and rest periods;
- 16 F. Failing to provide legally required compensation for forfeited vested paid  
 17 vacation benefits;
- 18 G. Failing to keep legally required records, including but not limited to  
 19 accurate records of hours worked;
- 20 H. Failing to provide accurate wage statements; and
- 21 I. Other violations of the Fair Labor Standards Act, California Labor Code,  
 22 and Industrial Welfare Commission Orders according to proof.

23 12. As a result of Defendants' unlawful conduct, Plaintiff and the Plaintiff Class  
 24 have been and continue to be systematically deprived of the wages to which they are entitled by  
 25 law to the detriment of themselves, their families, and to the public at large.

26 13. Plaintiff alleges that, at all times material herein, Defendants have been aware of  
 27 both the Federal and California laws governing employee compensation and have nevertheless  
 28 engaged in widespread and flagrant violations of these laws. Plaintiff is informed, believes, and

1 thercon alleges that Defendants' company policies, practices, and payroll records will reveal  
 2 that members of the Plaintiff Class have been routinely paid for fewer hours than they actually  
 3 worked, including overtime hours, have unlawfully been provided with compensating time off  
 4 in lieu of overtime pay, have been denied meal and rest periods without being compensated,  
 5 have been caused to forfeit vested paid vacation benefits without being compensated, secretly  
 6 paid lower wages than required by contract and/or statute, and/or been provided with inaccurate  
 7 wage statements.

8 **CLASS ALLEGATIONS**

9 14. **Proposed Class and Nature of the Class Claims:** The individual Plaintiff, as  
 10 Class Representative, brings this action on her own behalf and on behalf of a class comprised of  
 11 all current, former, and future employees of Defendants during the relevant statutory periods.

12 15. **Numerosity:** The size of the Plaintiff Class makes a class action both necessary  
 13 and efficient. On information and belief, Plaintiff estimates that the Plaintiff Class consists of at  
 14 least hundreds of current and former employees, and an indefinite number of future employees.  
 15 Members of the Plaintiff Class are ascertainable but so numerous that joinder is impracticable.  
 16 The Plaintiff Class includes future class members whose joinder is inherently impossible.

17 16. **Typicality:** The claims of the Class Representative are typical of the claims of  
 18 the class as a whole. The Class Representative has been employed by Defendants during the  
 19 relevant statutory period. The Class Representative has been underpaid, and continues to be  
 20 underpaid, because of Defendants' unlawful employment policies and practices. The unlawful  
 21 policies and practices which have operated to deny the Class Representative wages, penalties,  
 22 meal and rest periods, and other compensation, benefits, and protections required by law are  
 23 typical of the unlawful practices which have and will continue to operate to deny other members  
 24 of the Plaintiff Class the compensation and benefits to which they are entitled.

25 17. **Common Questions of Law and Fact:** This case poses common questions of law  
 26 and fact affecting the rights of all members of the Plaintiff Class, including but not limited to:

- 27 A. Did class members primarily engage in non-exempt work?
- 28 B. Did Defendants misclassify class members as exempt employees?

- 1 C. Did class members work in excess of eight (8) hours in one day?
- 2 D. Did class members work in excess of twelve (12) hours in one day?
- 3 E. Did class members work in excess of forty (40) hours in one week?
- 4 F. Are Defendants liable to class members for overtime compensation?
- 5 G. Did Defendants provide class members with "Management Recognition
- 6 Days" in lieu of overtime pay?
- 7 H. Does Defendants' "Management Recognition Days" policy, as applied to
- 8 class members, violate California Labor Code §§ 204.3 and 510?
- 9 I. Did Defendants cause class members to forfeit vested paid vacation
- 10 benefits without providing compensation?
- 11 J. Did Defendants maintain policies or practices which failed to provide all
- 12 legally required meal and/or rest periods to class members?
- 13 K. Did Defendants secretly pay class members lower wages than required by
- 14 statute?
- 15 L. Did Defendants provide class members with inaccurate written wage
- 16 statements?
- 17 M. Did Defendants violate California Business & Professions Code §§ 17200
- 18 *et seq.* by their unlawful practices as alleged herein?
- 19 N. Are class members entitled to civil penalties?
- 20 O. Are class members entitled to prejudgment interest?
- 21 P. Are class members entitled to attorneys' fees?

22 18. Adequacy of Class Representation: The Class Representative can adequately and  
 23 fairly represent the interests of the Plaintiff Class defined above because her individual interests  
 24 are consistent with, and not antagonistic to, the interests of the class.

25 19. Adequacy of Counsel for the Class: Counsel for Plaintiff possess the requisite  
 26 resources and ability to prosecute this case as a class action and are experienced labor and  
 27 employment attorneys who have successfully litigated other cases involving similar issues.

28 //

1       20. Propriety of Class Action Mechanism: A class action is vastly superior to other  
2 available means for fair and efficient adjudication of the class members' claims and would be  
3 beneficial to the parties and the Court. Class action treatment will allow a number of similarly  
4 situated persons to simultaneously and efficiently prosecute their common claims in a single  
5 forum without the unnecessary duplication of effort and expense that numerous individual  
6 actions would entail. In addition, the monetary amounts due to many individual class members  
7 are likely to be relatively small and would make it difficult, if not impossible, for individual  
8 class members to both seek and obtain relief. Moreover, a class action will serve an important  
9 public interest by permitting class members to effectively pursue the recovery of moneys owed  
10 to them. Further, a class action will prevent the potential for inconsistent or contradictory  
11 judgments inherent in individual litigation.

## ALLEGATIONS OF THE CLASS REPRESENTATIVE

13        21.    May Vang. May Vang has worked for Defendants since 1999 at locations in the  
14        United States both inside and outside of California. During her employment with Defendants,  
15        she has held the positions of Loss Prevention Associate, Linens Manager, Operations Manager,  
16        Customer Service Manager, and Assistant Store Manager (Operations). Based on her actual job  
17        duties, Ms. Vang has been a non-exempt employee even though she has been misclassified as an  
18        exempt employee during her employment as an Assistant Store Manager (Operations). During  
19        her employment with Defendants, she has not been compensated for all hours worked, including  
20        overtime hours, has been unlawfully provided with compensating time off in lieu of overtime  
21        pay, has not been provided with all legally required meal and rest periods, has been caused to  
22        forfeit vested paid vacation benefits without receiving compensation, and has not been provided  
23        with accurate wage statements.

**FIRST CAUSE OF ACTION**

## **VIOLATIONS OF THE FAIR LABOR STANDARDS ACT**

(28 U.S.C. §§ 201, *et seq.*)

27        22. Plaintiff incorporates paragraphs 1 through 21 of this complaint as if fully  
28 alleged herein.

23. The Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201 *et seq.*, applies to employees in industries engaged in interstate commerce. *See* 29 U.S.C. § 202(a). Because Plaintiff and the other members of the Plaintiff Class work in the mercantile industry, they are entitled to the protections of the FLSA. *See* 29 U.S.C. § 203(b); 29 C.F.R. § 776.10(a).

24. The FLSA requires employers subject to the Act to compensate employees for all hours worked and for hours worked in excess of forty (40) hours in one week at one and one-half their respective regular rates of pay. 29 U.S.C. § 207(a)(1).

25. Defendants have regularly failed to compensate Plaintiff for all hours worked, including hours in excess of forty (40) hours in one (1) week. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable three-year limitations period set forth under 29 U.S.C. § 255, Defendants have willfully maintained a policy or practice of failing to compensate members of the Plaintiff Class for all hours worked, including hours worked in excess of forty (40) hours in one (1) week.

26. Because Plaintiff has been subject to the same allegedly unlawful policies and/or practices of Defendants as other class members, Plaintiff is entitled to bring this action on behalf of herself and other members of the Plaintiff Class.

27. Pursuant to 29 U.S.C. § 216(b), Plaintiff seeks monetary damages on behalf of himself and the other class members for all hours worked for which they have not been compensated, including hours worked in excess of forty (40) hours in one week at one and one half-times the respective regular rates of pay for each class member, in amounts subject to proof, liquidated damages, as well as reasonable attorney's fees and costs of suit resulting from Defendants' willful failure to comply with the FLSA.

## SECOND CAUSE OF ACTION

## **FAILURE TO PROVIDE COMPENSATION FOR ALL HOURS WORKED**

(Cal. Lab. Code § 204)

28. Plaintiff incorporates paragraphs 1 through 27 of the Complaint as if fully alleged herein.

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29. At all relevant times, Plaintiff and the other members of the Plaintiff Class have been entitled to the benefits and protections of California Labor Code § 204, including compensation for off-the-clock work that Defendants either knew or should have known that they were performing.

30. During a typical week while employed by Defendants, Plaintiff has worked more than eight (8) hours on any given day, more than five (5) days per week, and more than forty (40) hours in the aggregate without compensating her for all hours worked.

31. Defendants either knew or should have known that Plaintiff worked more than eight (8) hours on any given day, more than five (5) days per week, and more than forty (40) hours in the aggregate, because Defendants are responsible for her work assignments and have records of her working hours. Plaintiff is informed and believes and thereon alleges that Defendants have maintained a company policy or practice of not compensating class members for all hours worked.

32. As a result of Defendants' unlawful conduct, both Plaintiff and the other class members have suffered damages in an amount, subject to proof, to the extent they were not paid the full amount of wages earned during each pay period during the applicable limitations period in which were not compensated for all hours worked.

### THIRD CAUSE OF ACTION

## FAILURE TO PAY OVERTIME COMPENSATION

(Cal. Lab. Code § 510)

33. Plaintiff incorporates paragraphs 1 through 32 of the Complaint as if fully alleged herein.

34. California Labor Code § 510(a) requires employers to compensate employees at one and one-half times their regular rates of pay for all hours worked in excess of eight (8) hours in one day and forty (40) hours in one week. It also requires employers to compensate employees at two times their regular rates of pay for all hours worked in excess of twelve (12) hours in one day.

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35. By requiring or otherwise permitting Plaintiff to work in excess of eight (8) hours in one day and forty (40) hours in one week without providing them with premium overtime compensation, including for hours in excess of twelve (12) hours on some days, Defendants violated California Labor Code § 510(a). Plaintiff is informed and believes and thereon alleges that Defendants have maintained a policy or practice of willfully requiring or otherwise permitting such unpaid overtime work of members of the Plaintiff Class.

36. As a result of Defendants' conduct, Plaintiff on behalf of herself and the other class members seeks compensation for all overtime hours worked for the relevant time periods set forth herein as well as interest thereon, costs and reasonable attorney's fees pursuant to California Labor Code § 1194(a).

#### **FOURTH CAUSE OF ACTION**

## UNLAWFULLY PROVIDING COMPENSATING TIME OFF

**IN LIEU OF OVERTIME PAY**

(Cal. Lab. Code §§ 204.3 and 510)

37. Plaintiff incorporates paragraphs 1 through 36 of the Complaint as if fully alleged herein.

38. California Labor Code § 204.3 only permits employers to provide compensating time off in lieu of overtime pay under very specific conditions. The applicable conditions here are as follows:

- A. The employer and employee must enter into a written agreement before the employee performs the overtime work;
- B. The employee must request, in writing, compensating time off in lieu of overtime pay;
- C. The employer must provide the employee with one and one-half hours of compensating time off for each overtime hour worked; and,
- D. The employer must make the compensating time off payable in cash upon the request of the employee.

11

1       39. During her employment with Defendants, Plaintiff has received compensating  
 2 time off pursuant to Defendants' written company policy. Plaintiff is informed and believes and  
 3 thereon alleges that Defendants have a practice or policy of providing other members of the  
 4 Plaintiff Class who have been misclassified as exempt employees with compensating time off in  
 5 lieu of overtime pay in the form of "Management Recognition Days."

6       40. Pursuant to a written company policy, Defendants provided Plaintiff and the  
 7 other misclassified class members with one "Management Recognition Day" for working a six-  
 8 day week during the period between Thanksgiving and the end of December. To qualify for  
 9 "Management Recognition Days", Plaintiff and the other class members must work a minimum  
 10 of 8 hours per day and six days per week during the payroll period. In addition, Plaintiff and the  
 11 other class members only receive credit for up to five (5) "Management Recognition Days"  
 12 during this period. Moreover, the company policy expressly states, "**At no time will [an**  
 13 **employee] be reimbursed for unused Management Recognition Days**" (emphasis in  
 14 original).

15       41. These days, regardless of label, are compensating time off for overtime work that  
 16 do not meet the requirements set forth in California Labor Code § 204.3 and thus do not comply  
 17 with the requirements for overtime pay set forth in California Labor Code § 510. Among other  
 18 things, Defendants offer these days to Plaintiff and the other class members as compensation for  
 19 overtime work at less than one and one-half hours compensating time for each overtime hour  
 20 worked, does not give them any choice over receiving overtime pay instead, does not obtain  
 21 written consent from its employees for this arrangement, and makes them subject to a "use it or  
 22 lose it policy."

23       42. As a result of Defendants' unlawful conduct, both Plaintiff and the other class  
 24 members who have been misclassified as exempt employees have suffered damages in an  
 25 amount, subject to proof, to the extent they were not paid the full amount of overtime wages  
 26 earned and instead received "Management Recognition Days" in lieu of overtime compensation  
 27 during the applicable limitations period.

28       //

**FIFTH CAUSE OF ACTION**  
**FORFEITURE OF VACATION PAY**

(California Labor Code § 227.3)

43. Plaintiff incorporates paragraphs 1 through 42 of the Complaint as if fully alleged herein.

44. During the applicable limitations period, Defendants caused Plaintiff to forfeit vested paid vacation benefits including "Vacation Time with Pay," "Personal Holidays," and "Management Recognition Days," without providing monetary compensation for them based on her regular rate of pay in effect at that time. Plaintiff is informed and believes and thereon alleges that Defendants have maintained policies or practices of causing members of the **Vacation Pay Class** to forfeit vested paid vacation benefits including "Vacation Time with Pay," "Personal Holidays," and "Management Recognition Days," without compensating them for forfeited days based on their rates of regular rates pay in effect at the time of forfeiture.

45. As a result of the above, Plaintiff seeks damages and restitution on behalf of both herself and the other class members for the forfeited vested paid vacation benefits in amounts subject to proof.

**SIXTH CAUSE OF ACTION**

46. Plaintiff incorporates paragraphs 1 through 45 of the Complaint as if fully alleged herein.

47. At all relevant times, Plaintiff and other members of the Plaintiff Class have been employees of Defendants covered by California Labor Code §§ 226.7 and 512, and Industrial Welfare Commission Order No. 7-2001.

48. Pursuant to California Labor Code §§ 512 and 226.7 and Industrial Welfare Commission No. 7-2001, Plaintiff and the other class members were entitled to rest periods of at least ten (10) minutes for each four (4) hour period of work, uninterrupted meal periods of at least thirty (30) minutes for each workday they worked more than five (5) hours, and second

1 uninterrupted meal periods of at least thirty (30) minutes for each workday they worked more  
 2 than ten (10) hours.

3 49. Defendants failed to provide Plaintiff with all legally required meal and/or rest  
 4 periods in accordance with California Labor Code §§ 226.7 and 510 and Industrial Welfare  
 5 Commission Order 7-2001. Plaintiff is informed and believes and thereon alleges that at all  
 6 relevant times within the applicable limitations period, Defendants maintained a policy or  
 7 practice of not providing class members with all legally required meal and/or rest periods,  
 8 including additional required meal and/or rest periods on days on which class members worked  
 9 in excess of ten (10) hours.

10 50. Defendants failed to pay Plaintiff and the other class members the additional  
 11 hour of pay required by California Labor Code § 226.7 and Wage Order 4-2001 for missed meal  
 12 and/or rest periods. Plaintiff is informed and believes and thereon alleges that at all relevant  
 13 times within the applicable limitations period, Defendants maintained a policy or practice of not  
 14 paying additional compensation to class members for missed meal and/or rest periods.

15 51. As a result of Defendants' unlawful conduct, Plaintiff and other class members  
 16 have suffered damages in an amount, subject to proof, to the extent they were not paid  
 17 additional compensation owed for missed rest periods.

18 **SEVENTH CAUSE OF ACTION**

19 **SECRETLY PAYING LOWER WAGES THAN  
 20 REQUIRED BY CONTRACT AND/OR STATUTE**

21 **(Cal. Lab. Code § 223)**

22 52. Plaintiff incorporates paragraphs 1 through 51 of the Complaint as if fully  
 23 alleged herein.

24 53. California Labor Code § 223 states in relevant part, "Where any statute . . .  
 25 requires an employer to maintain a designated wage scale, it shall be unlawful to secretly pay a  
 26 lower wage while purporting to pay the wage designated by statute."

27 54. During her employment with Defendants, Defendants have secretly paid Plaintiff  
 28 lower wages than required by statute while purporting to pay her legal wages by misclassifying

1 her as an exempt employee, paying her for fewer hours than she actually worked, not paying her  
 2 overtime rates for overtime hours worked, providing her with "Management Recognition Days"  
 3 in lieu of overtime pay, not compensating her for forfeited vested paid vacation benefits at her  
 4 regular rates of pay in effect at those times, and not compensating her for missed meal and rest  
 5 periods. Plaintiff is informed and believes and thereon alleges that, at all relevant times during  
 6 the limitations period, Defendants have maintained a policy or practice of purporting to pay  
 7 members of the Plaintiff Class pursuant to the wage scales set forth in the California Labor  
 8 Code. However, Plaintiff is also informed and believes and thereon alleges that Defendants have  
 9 in fact secretly paid class members lower wages than required by statute by misclassifying them  
 10 as exempt employees, paying them for fewer hours than they actually worked, not paying them  
 11 overtime rates for all overtime hours worked, providing them with "Management Recognition  
 12 Days" in lieu of overtime pay, not compensating them for forfeited vested paid vacation benefits  
 13 at her regular rates of pay in effect at those times, and/or not compensating them for missed  
 14 meal and/or rest periods.

15 55. By reason of the above, Plaintiff and the other class members are entitled to  
 16 restitution for all unpaid amounts due and owing to within four years of the date of the filing of  
 17 the complaint until the date of entry of judgment. Further, Plaintiff on behalf of herself and the  
 18 other class members seeks interest thereon pursuant to California Labor Code § 218.6, costs  
 19 pursuant to reasonable attorney's fees pursuant to California Code of Civil Procedure § 1021.5.

20 **EIGHTH CAUSE OF ACTION**

21 **FAILURE TO PROVIDE ACCURATE, WRITTEN WAGE STATEMENTS**

22 **(California Labor Code § 226)**

23 56. Plaintiff incorporates paragraphs 1 through 55 of the Complaint as if fully  
 24 alleged herein.

25 57. At all relevant times, Plaintiff and other members of the Plaintiff Class have been  
 26 employees of Defendants entitled to the benefits and protections of California Labor Code §  
 27 226. Pursuant to California Labor Code § 226(a), Plaintiff and the other class members were  
 28 entitled to receive, semimonthly or at the time of each payment of wages, an accurate itemized

1 statement showing: a) gross wages earned; b) net wages earned; c) all applicable hourly rates in  
 2 effect during the pay period; and d) the corresponding number of hours worked at each hourly  
 3 rate by the employee.

4 58. Defendants failed to provide Plaintiff accurate itemized statements in accordance  
 5 with California Labor Code § 226(a) because Plaintiff's wage statements did not, among other  
 6 things, accurately reflect all of the hours that actually worked and the appropriate corresponding  
 7 rates of pay for all hours worked. Plaintiff is informed and believes and thereon alleges that, at  
 8 all relevant times during the applicable limitations period, Defendants maintained a policy or  
 9 practice of not providing class members with wage statements accurately reflecting the number  
 10 of hours actually worked by class member and the corresponding rates of pay.

11 59. Defendants' failure to provide Plaintiff and the other class members with  
 12 accurate wage statements was knowing and intentional. Defendants had the ability to provide  
 13 Plaintiff and the other class members with accurate wage statements but intentionally provided  
 14 wage statements that Defendants knew were not accurate.

15 60. As a result of Defendants' unlawful conduct, Plaintiff and the other class  
 16 members have suffered injury. Their legal rights to receive accurate wage statements were  
 17 violated and they were misled about the amount of wages they had actually earned and were  
 18 owed. In addition, the absence of accurate information on their wage statements prevented  
 19 immediate challenges to Defendants' unlawful pay practices, has required discovery and  
 20 mathematical computations to determine the amount of wages owed, has caused difficulty and  
 21 expense in attempting to reconstruct time and pay records, and/or has led to the submission of  
 22 inaccurate information about wages and amounts deducted from wages to state and federal  
 23 government agencies.

24 61. Pursuant to California Labor Code § 226(e), Plaintiff and the other class  
 25 members are entitled to recover fifty dollars for the initial pay period in which a violation of  
 26 California Labor Code § 226(a) occurred and one hundred dollars for each violation of  
 27 California Labor Code § 226(a) in a subsequent pay period, not to exceed an aggregate penalty  
 28 of four thousand dollars per class member, and are entitled to an award of costs and reasonable

1 attorney's fees.

2 **NINTH CAUSE OF ACTION**

3 **UNFAIR COMPETITION**

4 (Cal. Bus. & Prof. Code §§ 17200 *et seq.*)

5 62. Plaintiff incorporates paragraphs 1 through 61 of the Complaint as if fully  
6 alleged herein.

7 63. The unlawful conduct of Defendants alleged herein amounts to and constitutes  
8 unfair competition within the meaning of California Business & Professions Code § 17200.  
9 Due to its unfair and unlawful business practices in violation of the California Labor Code,  
10 Defendants have gained a competitive advantage over other comparable companies doing  
11 business in the State of California that comply with their legal obligations to compensate  
12 employees for all earned wages.

13 64. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the  
14 other members of the Plaintiff Class have suffered injury in fact and lost money or property.  
15 Plaintiff and the other class members were not paid for all hours worked, not paid overtime  
16 wages for overtime hours worked, unlawfully provided "Management Recognition Days" in  
17 lieu of overtime pay, were caused to forfeit vested paid vacation benefits without compensation,  
18 were not provided with legally required meal and/or rest periods, were secretly paid lower wage  
19 rates than required by statute, and/or were provided with inaccurate wage statements. Pursuant  
20 to California Business & Professions Code § 17203, Plaintiff and the other class members are  
21 entitled to restitution of all monies rightfully belonging to them that Defendants did not pay  
22 them or otherwise retained by means of its unlawful and unfair business practices.

23 65. Plaintiff and the other class members are entitled to recover reasonable attorney's  
24 fees in connection with their unfair competition claims pursuant to California Code of Civil  
25 Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

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## TENTH CAUSE OF ACTION

## CIVIL PENALTIES

(California Labor Code §§ 2698, *et seq.*)

66. Plaintiff incorporates paragraphs 1 through 65 of the Complaint as if fully alleged herein.

67. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7, 227.3, 510, 512, and 1194.

68. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of herself and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

69. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and other members of the Plaintiff Class are entitled to recover civil penalties for Defendants' violations of California Labor Code §§ 200, 201, 202, 203, 204, 223, 226(a), 226.7, 227.3, 510, 512, and 1194 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code §§ 200, 201, 202, 203, 226.7, 227.3, and 1194, one hundred dollars (\$100.00) for each aggrieved employee per pay period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2));

8. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of the amount unlawfully withheld from each aggrieved employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 210):

C. For violations of California Labor Code § 223, one hundred dollars (\$100.00) for each aggrieved employee for each initial violation and two

hundred dollars (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of the amount unlawfully withheld from each aggrieved employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 225.5);

D. For violations of California Labor Code § 226(a), fifty dollars (\$50.00) for the initial pay period in which a violation of California Labor Code § 226(a) occurred and one hundred dollars (\$100.00) for each violation of California Labor Code § 226(a) in a subsequent pay period, up to an aggregate penalty of four thousand dollars (\$4,000.00) per class member, plus an award of costs and reasonable attorney's fees (penalty amounts established by California Labor Code § 226(e)).

E. For violations of California Labor Code § 226(a), two hundred fifty dollars (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per employee for each subsequent violation (penalty amounts established by California Labor Code § 226.3); and,

F. For violations of California Labor Code §§ 510 and 512, fifty dollars (\$50.00) for each aggrieved employee for each initial violation for pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages and one hundred dollars (\$100.00) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages (penalty amounts established by California Labor Code § 558).

23       70. Plaintiff is currently in the process of complying with the procedures for bringing  
24 suit specified in California Labor Code § 2699.3. By letter dated September 11, 2009, Plaintiff  
25 gave written notice by certified mail to the Labor and Workforce Development Agency  
26 ("LWDA") and Defendants of the specific provisions of the California Labor Code alleged to  
27 have been violated, including the facts and theories to support the alleged violations. Plaintiff  
28 anticipates that the LWDA will express its intent not to investigate the alleged violations and

1 that full compliance with the requirements of California Labor Code § 2699.3 will be achieved  
2 by the time of final judgment in this action.

3 71. Pursuant to California Labor Code § 2699(g), Plaintiff and the other class  
4 members are entitled to an award of reasonable attorney's fees and costs in connection with  
5 their claims for civil penalties.

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## PRAYER FOR RELIEF

1. WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, prays for relief and judgment against Defendants as follows:

- A. An order that the action be certified as a class action;
- B. An order that Plaintiff be appointed class representative;
- C. An order that counsel for Plaintiff be appointed class counsel;
- D. Damages;
- E. Restitution;
- F. Civil penalties;
- G. Statutory penalties;
- H. Pre-judgment interest;
- I. Costs of suit;
- J. Reasonable attorney's fees; and
- K. Such other relief as the Court deems just and proper.

Dated: September 15, 2009

LAW OFFICES OF SHAUN SETAREH

THE SPIVAK LAW FIRM

By: Shaun Setareh

By: David Spivak

LAW OFFICES OF LOUIS BENOWITZ

By: Louis Benowitz  
Louis Benowitz

Attorneys for Plaintiffs,  
May Vang and  
all others similarly situated